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F.#2010R00991

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- against -

D E C L A R A T I O N

Cr. No. 11-857 (WFK)

JOSE BARRERA,
also known as "Travieso,"
JOSE CELESTINO GUILLEN-RIVAS,"
also known as "Pirata," and
ABRAHAM IRAHETA,
also known as "Lobo,"

Defendants.

- - - - -X

Enio Bencosme, under penalty of perjury pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I have been a Detective with the New York City Police Department ("NYPD") for approximately 20 years. I am currently assigned to the Queens Gang Division. I submit this declaration in connection with the government's opposition to the defendant Abraham Iraheta's motion to dismiss Count Sixteen of the indictment.

2. For several years, my office has been investigating members of the street gang La Mara Salvatrucha, also known as "MS-13" (hereinafter "MS-13"). MS-13 engages in acts and threats involving murder, attempted murder, robbery and

extortion, in violation of the laws of the various states, including New York, and narcotics trafficking, in violation of Title 21, U.S.C., Sections 841 and 846.

3. On December 1, 2011, I was advised by members of the Violent Gang unit of the U.S. Department of Homeland Security, Homeland Security Investigations, that Iraheta and other MS-13 members were plotting to attack rival gang members in the area and might be armed with a gun. That evening, NYPD Lieutenant Gerald Pizzano and I attempted to intercept Iraheta and the others before they could carry out the assault.

4. Lieutenant Pizzano and I drove in an unmarked police car to the apartment building where Iraheta lived. As we approached the building, I observed Iraheta and three other men standing out in front. As we pulled up to the men, Iraheta picked up a bat. When I stepped out of the car, Iraheta swung the bat in an upward direction. I identified myself as a police officer and told Iraheta to put the bat down. Iraheta refused to comply and shouted, in sum and substance, "Go ahead and shoot me, I'm going to fuck you up!"

5. Iraheta subsequently dropped the bat, but refused to comply with my direction to lie face down on the ground and give up his hands so that we could apply handcuffs. Iraheta continued to resist arrest, shouting, in sum and substance, "I'm going to fuck you up, I'm going to kill you!" We eventually

restrained Iraheta, placed him under arrest and transported him to the precinct for processing.

6. Within the few days following Iraheta's arrest, I approached the owner of building in front of which Iraheta had been apprehended. At the building, I reviewed a video recording from one of the building's surveillance cameras that captured the arrest. The recording, which lacked audio, was consistent with my recollection of how the arrest unfolded, including the fact that Iraheta had brandished a baseball bat at me. I obtained a copy of the video on a small "thumb" drive and took the drive back to my office.

7. I was unable to open the file containing the recording on my computer in the office. As a result, I took the thumb drive home in order to attempt to view it on my laptop computer. Since that date, I have been unable to locate the drive. I have thoroughly searched both my home and office but have not been able to find it.

8. I did not intentionally lose or destroy the drive.

Dated: Brooklyn, New York
February 1, 2013



Enio Bencosme
Detective
Queens Gang Division
New York City Police Department